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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,160	11/13/2003	George Legendziewicz	LEGEND 3.0-001	4522
EZRA SUTTON PA PLAZA 9 900 ROUTE 9 WOODBIDGE, NJ 07095			EXAMINER PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/714,160

Applicant(s)

LEGENDZIEWICZ, GEORGE

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 128-135 and 233-267 is/are pending in the application.
- 4a) Of the above claim(s) 233, 239-245, 254-260 and 266 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 128-135, 234, 238, 246-253, 261-265 and 267 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 3-29-05 and this action is final.

Election/Restrictions

2. Claim 233 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species A, F, G and I, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7-9-04.

Claims 239-240 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species D and E, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7-9-04.

Claims 241-244 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species E, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7-9-04.

Claim 245 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species F and G, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7-9-04.

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Claims 254-255 and 266 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species D and E, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7-9-04.

Claims 256-259 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species E, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7-9-04.

Claim 261 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species F and G, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7-9-04.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 128-131, 133, 135, 234-238, 246-253, 263, 265 and 267 are rejected under 35

U.S.C. 102(b) as being anticipated by JP Patent No. 2000-41557.

Referring to claims 128 and 246, the Japanese patent discloses a fishing rod holder assembly with fishing rod holder support stanchion member for holding one or more fishing rods thereto in combination with a boat mounted rod holder comprising, a flush mounted rod holder – see figure 7, mounted within a gunwale of a boat – see figures 3 and 6, two or more fishing rod holders – see figure 7, each for holding a fishing rod – at 20,27, therein, a U-shaped fishing rod

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holder support stanchion member – at 42,45,47,49,51, including an anchoring post – at 47,53,55, having a horizontal crossbar member – at 42, the crossbar member being disposed along a horizontal axis – see for example figures 7-10, the anchoring post being offset relative to the center of the crossbar member along the horizontal axis – see for example figures 7-10, having a first opposing end and a second opposing end – see figure 7, the first opposing end having a first upwardly extending holding post – at 42, connected thereto and the second opposing end having a second upwardly extending holding post – at 42, connected thereto for forming a U-shaped configuration thereof – see figure 7, the anchoring post being mounted within the flush mounted rod holder – see figures 3-10, and a first attachment element – see at the hinge, tabs and screw proximate 41, having at least one end shaped at an angle relative to the vertical axis for attaching the fishing rod holder to the first upwardly extending holding post – see for example figures 7-10, and a second attachment element – at the tabs and screw proximate 43, having at least one end shaped at an angle relative to the vertical axis for attaching the fishing rod holder to the second upwardly extending holding post of the fishing rod holder support stanchion member for forming a fishing rod holder assembly thereof – see for example figures 7-10.

Referring to claims 129 and 247, the Japanese patent further discloses the anchoring post – at 45,46,47, is connected to the horizontal crossbar member in a perpendicular relationship to the horizontal crossbar member – at 42 – see for example figures 7-10.

Referring to claims 130 and 253, the Japanese patent further discloses the anchoring post has a proximal end and a distal end – see for example at 45,47 in figure 7, the proximal end including a locking notched end – proximate 55 – see figure 7.

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Referring to claims 131 and 261, the Japanese patent further discloses the fishing rod holder assembly is integrally connected to form a unitary constructed unit – see for example figure 7.

Referring to claims 133 and 263, the Japanese patent further discloses the fishing rod holder support stanchion member is made of tubular construction to form the unitary constructed unit – see for example at 42,45,47 in figure 7.

Referring to claims 135 and 265, the Japanese patent further discloses the tubular construction of the fishing rod holder support stanchion member is formed by tubular bending to form the unitary constructed unit – see for example figure 7.

Referring to claim 234, the Japanese patent discloses each of the first and second upwardly extending holding posts are disposed at an angle relative to the vertical axis – see for example – at 42 in figures 7-10.

Referring to claim 235, the Japanese patent discloses the angle is between 0 degrees and 90 degrees from the vertical axis – see for example figures 7-10.

Referring to claim 236 and 252, the Japanese patent discloses each of the first and second upwardly extending holding posts – see at 42, are perpendicular to the horizontal crossbar member – see for example figures 7-10.

Referring to claims 237, 248 and 250, the Japanese patent discloses at least one of the first and second upwardly extending holding posts – see at 42, are at an angle to a vertical Y-axis relative to the horizontal crossbar member – see for example figures 7-10.

Referring to claims 238, 249 and 251, the Japanese patent discloses the angle is between 0 and 90 degrees from the vertical Y-axis – see for example figures 7-10.

Referring to claim 267, the Japanese patent discloses the anchoring post is detachably mounted within a flush mounted rod holder on a gunwhale of a boat – see for example figures 7-11.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 132, 134, 262 and 264 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese as applied to claims 128, 133, 246 or 263 above, and further in view of U.S. Patent No. 4,485,579 to Hawie.

Referring to claims 132 and 262, the English abstract of the Japanese patent does not disclose the fishing rod holder support stanchion member is made from materials being rust resistant selected from the group of plastics, steel, stainless steel, aluminum or titanium. Hawie does disclose the support stanchion member – at 11-14, is made from stainless steel – see for example column 2 lines 18-38. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the Japanese patent and add the support stanchion member being stainless steel of Hawie, so as to allow for the device to be more durable for outdoor use.

Referring to claims 134 and 264, the English abstract of the Japanese patent does not disclose the tubular construction of the fishing rod holder support stanchion member is formed

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by welding to form the unitary constructed unit. Hawie does disclose the fishing rod holder support stanchion member – at 11-14, is formed by welding to form the unitary constructed unit – see for example column 2 lines 18-38. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the Japanese patent and add the stanchion member being welded together of Hawie, so as to allow for the device to be durable for repeated use.

Response to Arguments

5. Applicant has submitted no arguments in the response dated 3-29-05.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

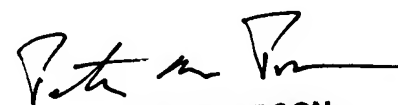
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley
Patent Examiner
Art Unit 3643



PETER M. POON
SUPERVISORY PATENT EXAMINER
4/22/05